

BEFORE THE

ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	MM Docket No. 90-176
)	
Amendment of Section 73.202(b),)	RM-7053
Table of Allotments,)	RM-8040
FM Broadcast Stations,)	
(Arnold and Columbia, California))	

To: Chief, Mass Media Bureau

RECEIVED
JUL 29 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CONSOLIDATED OPPOSITION TO MOTIONS FOR LEAVE TO INTERVENE

Clarke Broadcasting Corporation ("Clarke"), by its attorneys, hereby opposes the Motions for Leave to Intervene filed July 16, 1998, by Golden Pegasus Financial Services, and July 20, 1998 by KZMS Broadcasting, Inc. in the above-captioned proceeding.

Neither Golden Pegasus nor KZMS has cited any rule which would permit its intervention in this proceeding. Neither party has previously participated in the proceeding. Neither party explains it could not have previously participated or sought leave to intervene. Neither party explains how its participation in the proceeding will assist the FCC in making a decision.

In fact, the only explanations offered are that Golden Pegasus is the licensee of FM station KBYN, Arnold, California, which operates on Channel 240A, and KZMS is licensee of FM station KTDO, Columbia, which operates on Channel 255A. Channels 240A and 255A are the two channels which are the subject of Clarke's Petition for Partial Reconsideration. But the fact that Golden Pegasus and KZMS currently hold licenses for these stations is immaterial to

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this proceeding. Both Golden Pegasus and KZMS were clearly on notice when they acquired these licenses that the FCC grant of the underlying construction permits had been conditioned on the outcome of this rulemaking proceeding. See Attachment A hereto, which is a letter from Larry D. Eads to Meredith S. Senter Jr. and David D. Oxenford dated July 24, 1995, concerning the grant of the construction permit for KBYN, Arnold, and Attachment B, which is a similar letter from Mr. Eads to Mr. Senter, regarding the construction permit for KTDO.

Accordingly, the Commission should deny the Motion for Leave to Intervene filed by Golden Pegasus and KZMS.

Respectfully submitted,

CLARKE BROADCASTING CORPORATION

By: 

Meredith S. Senter, Jr.

Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W.
Suite 600
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(202) 429-8970

July 29, 1998

Its Attorney

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

AUG 10 1995

Leventhal, Senter & Lerman

JUL 24 1995

IN REPLY REFER TO:
1800B3-JWR

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Leventhal, Senter & Lerman
2000 K Street NW
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Washington, DC 20006-1809

David D. Oxenford, Jr., Esquire
Fisher, Wayland, Cooper Leader and Zaragoza
2001 Pennsylvania Ave. NW
Suite 400
Washington, DC 20006

In re: NEW(FM), Channel 240A, Arnold, California
Petition for Reconsideration of Grant of
Construction Permit
File No. BPH-921214MG

Dear Counsel:

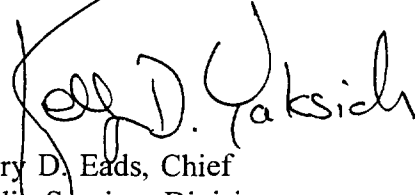
We have on file Clarke Broadcasting Corporation's ("CBC") November 22, 1993 "Petition For Partial Reconsideration." CBC seeks reconsideration of the October 15, 1993 grant of the above-referenced application of Clear Mountain Air Broadcasting Company ("CMA") to construct a new commercial station at Arnold, California. CBC requests that CMA's construction permit be expressly conditioned on the outcome of its appeal of MM Docket No. 90-176, the rulemaking establishing Channel 240A at Arnold.

Our review of the record indicates that CMA's construction permit should have contained an advisory condition. We will re-issue CMA's authorization to correct this inadvertent omission. We note, however, that because of the filing of a petition for reconsideration in the subject rulemaking, CMA's construction of the authorized facilities has always been at its own risk. See Meridian Communications, 2 FCC Rcd 5904 (Rev. Bd. 1987) (An authorization's finality is stayed by petition for reconsideration of the underlying proceeding).

Accordingly, the "Petition for Partial Reconsideration" filed by Clarke

Broadcasting Corporation IS GRANTED to the extent indicated herein.

Sincerely,

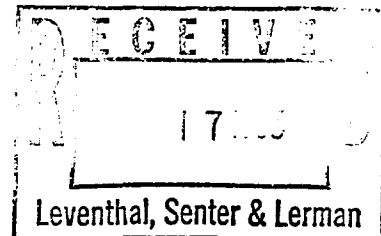

for Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

ATTACHMENT B

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554
APR 24 1995

In reply refer to: 1800B3-JR

Meredith S. Senter, Jr., Esquire
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In re: Gold Country Radio
Station KTDO(FM), Columbia CA
File No. BPH-921214MF

Petition for Partial Reconsideration
Emergency Motion for Stay

Modification of Construction Permit
File No. BMPH-940815IB
Request for Expedited Processing
Petition to Deny

Dear Mr. Senter:

This concerns: (1) the Emergency Motion for Stay filed October 30, 1992 by Clarke Broadcasting Corporation ("Clarke"); (2) the construction permit for a new FM station on Channel 255A, Columbia, California (File No. BPH-921214MF) issued to Gold Country Radio ("Gold"); (3) the September 2, 1993 Petition for Partial Reconsideration of the permit grant filed by Clarke; (4) Gold's application to modify its permit (File No. BMPH-940815IB); (5) Clark's September 22, 1994 Petition to Deny the modification application; and (7) related pleadings.¹ For the reasons set forth below, Clarke's petitions are denied, and action in response to the modification application is deferred.²

Background. Channel 255A was allocated to Columbia in the context of a rulemaking

¹ Gold filed an Opposition to the Petition for Partial Reconsideration on September 15, 1993. Clarke submitted a Reply on September 27, 1993. Gold filed an Opposition to the Petition to Deny on October 11, 1994, to which Clarke filed a Reply on December 1, 1994. On August 12, 1994, Gold requested expedited processing of its modification application.

² Deferral is pursuant to a request by the applicant. This renders moot Gold's request for expedited processing.

proceeding.³ Clarke's request for reconsideration of that allocation action was denied insofar as it related to Channel 255A at Columbia.⁴ Clarke also requested a stay, seeking to delay opening of the Channel 255A filing window pending a determination of its rulemaking reconsideration request. No action was taken in response to the stay motion, the filing window was opened, and Gold's application for a construction permit was granted. Thus, Clarke's stay request is moot.

Petition for Partial Reconsideration. Gold's permit is not conditioned on the outcome of the rulemaking proceeding. Clarke seeks to have such a condition added to the permit. Clarke argues that it would be adversely affected if its rulemaking reconsideration is subsequently granted and Gold's permit is not rescinded. Clarke also maintains that, inasmuch as its rulemaking reconsideration and applications motion were pending at the time Gold's permit application was filed, and inasmuch as the Commission "typically conditions" permits in such circumstances on the outcomes of related rulemaking proceedings, there was no reason for it to intervene earlier in the licensing proceeding.

The Bureau generally indicates on a permit that it is subject to an ultimate rulemaking determination, but the fact that it did not do so in this case has no practical or legal effect. Should Clarke prevail on reconsideration of the allocations action, the Columbia allotment would be deleted, and the grant of Gold's permit would be rescinded. Clarke's suggestion that Gold somehow is better positioned without the condition on its permit is without merit. Although Clarke speaks of the need to preserve the "sanctity of (the) Commission's processes and avoidance of appearances of prejudgment," issuance of the construction permit to Gold without an explicit condition has no bearing on the decision of the Bureau's Policy and Rules Division regarding Clarke's allocation reconsideration.

Petition to Deny. Gold's modification application proposes a change in transmitter site and use of a directional antenna for unbuilt Station KTDO.⁵ Clarke's petition to deny incorporates the text of its Petition for Partial Reconsideration.⁶ The Petition to Deny is procedurally defective, inasmuch as a Petition to Deny does not lie against a minor modification application. See 47 C.F.R. §73.3584(a). Even considered as an Informal Objection pursuant to 47 C.F.R. §73.3587, however, Clarke's petition will be denied for the same reasons as its partial reconsideration petition.

Accordingly, in light of the above and pursuant to 47 C.F.R. §0.283: the Petition for Partial Reconsideration filed September 2, 1993 by Clarke Broadcasting Corporation IS DENIED; its

³ Columbia, California, 6 FCC Rcd 3292 (MMB 1992).

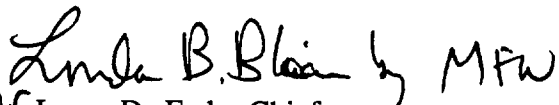
⁴ Arnold and Columbia, California, 7 FCC Rcd 6302 (MMB 1992).

⁵ KTDO was formerly assigned the call letters KAGF.

⁶ On December 1, 1994, counsel for Clarke sent by facsimile to the FM Branch a statement that it "has no objection" to grant of the modification application with Clarke's proposed condition.

Petition to Deny filed September 22, 1994 IS DISMISSED and, considered as an Informal Objection, IS DENIED; and its Emergency Motion for Stay IS DISMISSED AS MOOT. Further, the action in response to the application to modify the construction permit for unbuilt Station KTDO(FM), Columbia, California (File No. BMPH-940815IB) IS DEFERRED at the request of the applicant, and the Request for Expedited Processing filed August 12, 1994 by Gold Country Radio IS DISMISSED AS MOOT.

Sincerely,


or Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: Lee W. Shubert, Esquire
Harry C. Martin, Esquire
Gold Country Radio

CERTIFICATE OF SERVICE

I, Cristina M. Lirag, do hereby certify that a true copy of the foregoing Consolidated Opposition to Motions for Leave to Intervene, was mailed by first-class mail, postage prepaid, this 29th day of July 1998, to the following:

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Cristina M. Lirag

* By Hand Delivery